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9

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WASHINGTON
12 AT SPOKANE

13 FAYE IRENE GUENTHER,
an individual,

14 Plaintiffs,

15 v.

16 JOSEPH H. EMMONS, individually,
AND OSPREY FIELD CONSULTING
17 LLC, a limited liability company,

18 Defendants.

No. 2:22-cv-00272-TOR

19 **DEFENDANTS' RESPONSE
IN OPPOSITION TO
PLAINTIFF'S MOTION FOR
EXPEDITED
CONSIDERATION OF
MOTION TO AMEND
COMPLAINT**

20 **Hearing Date: 09/06/2024
WITHOUT ORAL
ARGUMENT**

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DEFENDANTS' OPPOSITION TO PLAINTIFF'S
MOTION FOR EXPEDITED CONSIDERATION
Case No. 2:22-cv-00272-TOR

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Pursuant to Local Civil Rule 7(i)(2)(C), Defendants oppose Plaintiff's Motion for Expedited Consideration of Her Motion to Amend Complaint (ECF No. 96) ("Motion to Expedite"). Defendants further request that the Motion to Amend Complaint (ECF No. 95) ("Motion to Amend") be summarily denied.

I. THE MOTION TO EXPEDITE PREJUDICES DEFENDANTS

Plaintiff's counsel did not inquire regarding the "substantive reason[s]" for Defendants' opposition to either motion. *See* ECF No. 96 at 3; Declaration of John A. DiLorenzo, Jr., concurrently filed, ¶ 2. Those reasons are straightforward.

Defense counsel is short-staffed beyond September 9, 2024, the day Plaintiff requests Defendants be ordered to respond to the Motion to Amend. *See* ECF No. 96-1 at 2. One senior lawyer is home caring for her young child following surgery on August 28, 2024, and another is litigating this matter while on a three-month sabbatical. DiLorenzo Decl. ¶ 4. Other team members are consumed by the press of business, including other cases and substantial ongoing work on Defendants' forthcoming motion for summary judgment in this case. *Id.* ¶ 5. Nevertheless, Plaintiff's proposed schedule would require defense counsel to prepare their opposition over a ***single weekend***, leaving little time to assess and respond to the legal arguments and inapposite authority in her Motion to Amend. ECF No. 96-1 at 2. Motions for summary judgment are due fewer than ten days after Plaintiff's proposed noting date, on September 27, 2024. ECF No. 93 at 1.

Finally, it bears emphasizing that the Motion to Expedite is unnecessary for yet another reason. As a professional courtesy, defense counsel offered to further consult on September 15, 2024, so that Defendants could inform Plaintiff whether

1 their motion for summary judgment would focus on the Renner allegations at all or
 2 whether they would assert defenses that pertain to the entire Complaint, potentially
 3 eliminating needless drafting on Plaintiff's behalf. DiLorenzo Decl. ¶ 3. Plaintiff
 4 proceeded to file these motions anyway.

5 II. THE MOTION TO AMEND IS IMPROPER AND UNNECESSARY

6 *First*, Plaintiff's Motion to Amend is untimely under the Scheduling Order.
 7 Indeed, “[a]ny motion to amend the pleadings” was due almost a year ago, on
 8 October 31, 2023. ECF No. 34 at 2. The Amended Scheduling Order did not change
 9 this deadline. *See generally* ECF No. 93.

10 “Although delay is not a dispositive factor in the amendment analysis, it is
 11 relevant, especially when,” as here, “no reason is given for the delay.” *See Lockheed*
 12 *Martin Corp. v. Network Sols., Inc.*, 194 F.3d 980, 986 (9th Cir. 1999). In *Lockheed*
 13 *Martin*, the Ninth Circuit affirmed the denial of a motion to amend, explaining that
 14 the plaintiff had three months to consider the proposed amendment. *Id.* Here,
 15 Plaintiff claims she formed the basis for her amendment at her May and June 2024
 16 deposition and offers no reason for waiting until the throes of dispositive briefing—
 17 needlessly necessitating a motion to expedite—to move to amend. ECF No. 96 at
 18 2–4 (¶¶ 4–6); *see generally* ECF No. 95. Plaintiff even indicates she had long been
 19 considering dropping the Renner-related claims by observing that her now-
 20 withdrawn motion to voluntarily dismiss, filed *April 3, 2024* (ECF No. 39), “made
 21 no mention of continued pursuit of her claims challenging the Renner-related
 22 accusation against her.” ECF No. 95 at 3. Nor did Plaintiff ask the Court to change
 23

1 the deadline when the parties, less than two months ago, moved to amend the
 2 Scheduling Order. *See generally* ECF No. 91; DiLorenzo Decl. ¶ 7.

3 ***Second***, Plaintiff wrongly asserts that the Motion to Amend “will not
 4 prejudice the Defendants.” ECF No. 95 at 1. To the contrary, the Motion prejudices
 5 Defendants in several ways. For example, it fails entirely to note that Guenther has
 6 admitted her damages are “under \$10,000,” ECF No. 48-24 at 2, *adding* new and
 7 unspecified damages allegations regarding “monetary fees associated with”
 8 Plaintiff’s alleged “emotional distress.” ECF No. 95-2 at 14 (new ¶ 3.48). This new
 9 allegation should entitle Defendants to further discovery, especially in light of
 10 Plaintiff’s capped damages admission and her earlier claim at her deposition that she
 11 “did not go to the doctor” but “got massages for stress release”—something one
 12 would not typically describe as a “monetary fee[.]”. *See* DiLorenzo Decl. ¶ 6 &
 13 Ex. A. Accordingly, if the Complaint is amended, Defendants will seek to reopen
 14 discovery and to resume Plaintiff’s deposition to inquire about these newly alleged
 15 “fees.” In assessing whether to allow amendment, the Court should bear in mind the
 16 prejudice caused by “the necessity for further discovery.” *Acri v. Int’l Ass’n of*
 17 *Machinists & Aerospace Workers*, 781 F.2d 1393, 1398–99 (9th Cir. 1986);
 18 *Lockheed Martin*, 194 F.3d at 986 (“A need to reopen discovery and therefore delay
 19 the proceedings supports a district court’s finding of prejudice from a delayed
 20 motion to amend the complaint.”).

21 ***Third***, the Motion to Amend is wasteful and unnecessary. If, as Plaintiff
 22 contends, her purpose is “*entirely* [to] narrow[] her claims,” ECF No. 95 at 2
 23 (emphasis added), she has much more efficient options. Plaintiff can concede, either

1 on summary judgment or before or during trial, that she is no longer pursuing any
 2 claim regarding the Flyer's statement about Renner. Defendants have already
 3 invested significant time and resources into their forthcoming motion for summary
 4 judgment, which is due September 27, 2024. *See* DiLorenzo Decl. ¶ 5; ECF No. 93
 5 at 1. The Court's ruling on the forthcoming motion(s) for summary may also obviate
 6 the need for any amendment.

7 * * *

8 For these reasons, the Court should deny Plaintiff's Motion for Expedited
 9 Consideration (ECF No. 96). In addition, because Plaintiff's Motion to Amend
 10 (ECF No. 95) is improper, unnecessary, and plainly at odds with the Scheduling
 11 Order, the Court should deny that motion as well.¹ At minimum, because Plaintiff
 12 filed her Motion to Amend with an expedited hearing date, ECF No. 95 at 1, the
 13 Court should deny the Motion to Amend without prejudice to refiling with a non-
 14 expedited, properly noticed hearing date.

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20 ¹ See, e.g., *Wagner v. Lindawagner.com*, 2016 WL 9224913, at *1 (E.D. Va. 2016)
 21 (response “to [the] Motion from defendant is not needed because on its face
 22 plaintiff's Motion lacks merit”).
 23

CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2024, I caused the document to which this certificate is attached to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Attorneys for Plaintiff Faye Guenther

I declare under penalty of perjury that the foregoing is true and accurate.

DATED this 5th day of September, 2024.

By: s/Ambika Kumar

Ambika Kumar, WSBA #38237